

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

DAMITRIUS CREIGHTON,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 4:15-CV-1595-RWS

**MEMORANDUM AND ORDER**

Before the Court is movant's amended motion to vacate brought by Diane Dragan, Assistant Federal Public Defender for the Eastern District of Missouri, pursuant to 28 U.S.C. § 2255 [Doc. 19], and motion to withdraw as counsel and request for appointment of substitute counsel due to a conflict of interest [Doc. 20]. The Court will grant the motion to withdraw and will appoint Phillip J. Kavanaugh, Federal Public Defender for the Southern District of Illinois, as substitute counsel for movant.

In the amended motion to vacate, movant seeks relief pursuant to the recent Supreme Court case of *Johnson v. United States*, 135 S.Ct. 2551 (2015). In *Johnson*, the Supreme Court of the United States held the "residual clause" of the Armed Career Criminal Act ("the ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii), unconstitutionally vague. Because movant is relying on *Johnson* as the basis for his arguments for resentencing, this Court will request assistance from the United States Probation Office for the Eastern District of Missouri in reviewing movant's § 2255 amended motion.

Accordingly,

**IT IS HEREBY ORDERED** that the motion to withdraw as counsel for movant and appointment of substitute counsel filed by Diane Dragan, Assistant Federal Public Defender for the Eastern District of Missouri, pursuant to 28 U.S.C. § 2255 [Doc. 20] is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk shall enter Federal Public Defender Phillip J. Kavanaugh as substitute counsel for movant in this action so that the Office of the Federal Public Defender in the Southern District of Illinois shall receive notice of all filings in this case.

**IT IS FURTHER ORDERED** that the Clerk shall forward a copy of movant's § 2255 amended motion to Phillip J. Kavanaugh, Federal Public Defender for the Southern District of Illinois, along with a copy of this Memorandum and Order.

**IT IS FURTHER ORDERED** that the Clerk shall notify the United States Probation Office for the Eastern District of Missouri of movant's § 2255 amended motion to vacate and that it is brought pursuant to the Supreme Court case of *Johnson v. United States*, 135 S.Ct. 2551 (2015).

**IT IS FURTHER ORDERED** that, within a reasonable time, and in its usual course of business, the United States Probation Office shall prepare and file in movant's criminal case a new Resentence Report relative to movant's contentions under *Johnson*, which shall be filed under seal, with access to the Court and the parties who have entered their appearance in this matter.

**IT IS FURTHER ORDERED** that within fourteen (14) days of the filing of the Probation Office's Disclosure Copy of the Resentence Report, the parties shall file, in movant's criminal case, simultaneous objections to the Resentence Report or statements that they have no objection. Within seven (7) days of such time, the Office of Probation and Pretrial Services shall file a final copy of the Resentence Report in movant's criminal case.

**IT IS FURTHER ORDERED** that on the same day that the Final Resentence Report is filed by the Probation Office in the criminal case, the Government shall file its response to movant's amended motion to vacate in this case.

**IT IS FURTHER ORDERED** that any reply to the Government's response to the amended motion to vacate shall be filed, in this case, no later than fourteen (14) days from the date the response is filed.

Dated this 24th day of June, 2016.

A handwritten signature in black ink, appearing to read "Rodney W. Sippe", is written over a horizontal line.

RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE